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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

0468

March 28, 1995

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: IB Docket No. 95-22, RM-8355 & RM-8392

Dear Mr. Caton:

Transmitted herewith, on behalf of Telex-Chile, S.A., are an original and four copies of its "Comments" regarding the above-referenced matter.

Should additional information be necessary, please communicate with this office.

Very truly yours,


Charles H. Kennedy
Counsel for Telex-Chile, S.A.

CHK:mah
Enclosures

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Before the
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Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Market Entry and Regulation of)
Foreign-Affiliated Entities)

IB Docket No. 95-22

RM-8355

RM-8392

COMMENTS OF TELEX-CHILE, S.A.

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Telex-Chile, S.A., opposes the proposed new rules for regulation of market entry by foreign-affiliated entities and urges the Commission to retain the present regulations without change. The existing regulations are entirely adequate to protect domestic carriers and promote international competition, while the proposed rules are cumbersome, favor incumbents over new entrants and invite retaliation by foreign governments.

I. The NPRM Does Not Establish A Need For New Rules.

The NPRM suggests generally that existing rules "may not adequately address" competitive issues posed by an environment in which carriers go beyond correspondent relationships to "seek entry on both ends of international circuits," and that the rules may cause "uncertainty in the market due to lack of a clear standard for evaluating applications by foreign carriers with different degrees of market power in their home markets."¹ Neither of these concerns provides any justification for the proposed rules.

As to the first concern, the present rules already permit the Commission to impose

¹ NPRM at paragraph 23.

nondiscrimination requirements on foreign carriers as a condition of entry into the market for U.S. international telecommunications, and the NPRM points to no case in which that approach has proved inadequate. In fact, the Commission and the public interest both have benefitted from the flexibility the Commission enjoys under the current procedures -- a flexibility that would be inhibited, rather than enhanced, by the procedures outlined in the NPRM.

Similarly, the Commission's concern about the impact of the present rules on markets is misplaced. The NPRM points to no evidence of adverse market impact from the supposed "uncertainties" of the present process; and even if some such impact could be shown, there is no reason to expect markets to react more favorably to rules that make the licensing process more cumbersome and raise competitive barriers still higher.

II. The Proposed Rules Are Needlessly Burdensome.

The proposal to replace the present, case-by-case review of international section 214 applications with a complex, mandatory demonstration of "effective market access" is a step backward from the Commission's 1992 decision to eliminate "overbroad [and] unnecessarily burdensome" regulation of international carriers.²

Similarly, the rules impose a number of particular requirements that will result in needless cost and delay. For example, the NPRM proposes that affiliated companies must file *all* of the accounting rates of their foreign affiliate; and that the Commission's "effective market access" analysis will be followed, not by a prompt decision on the application, but by a request to the Executive Branch to offer *its* views on the applicant's entry into the U.S. market.

These proposals guarantee that the Section 214 process will be longer and more

² In the Matter of Regulation of International Common Carrier Services, 7 FCC Rcd 7331, 7332 (Report and Order released Nov. 6, 1992).

complex than it is today, and should not be adopted without compelling evidence that the present, more flexible process has failed to protect the public interest.

III. The Proposed Rules Are Anticompetitive And Favor Incumbents.

The NPRM's stated intention is to encourage the opening of telecommunications markets and to protect U.S. carriers from unfair competition from foreign carriers. The actual effect of the proposed changes, however, will be to reduce competition.

Notably, the proposed rules will impose regulatory market entry barriers on new entrants that their entrenched competitors did not face. For example, while Telefonica B.V.I. has been able to acquire Telefonica Larga Distancia de Puerto Rico and ENTELChile has been permitted to acquire AmericaTel relatively effortlessly; and while Cable & Wireless and British Telecom (BT) also have acquired U.S. operations under the existing, flexible rules; the proposed rules would impose a higher burden on additional operators from those countries seeking to compete in international markets. Rather than favoring competition in foreign countries, this approach inhibits it by increasing the costs and uncertainties faced by new entrants. Indeed, the only beneficiaries of the proposed rules would be established carriers such as AT&T -- the carrier whose petition for rulemaking brought this NPRM into being.

IV. The Proposed Rules Invite Retaliation.

A number of countries -- including Chile, New Zealand and the United Kingdom -- have more liberal rules than the United States for entry of foreign carriers into their markets. To impose new, burdensome and needless regulatory hurdles on carriers from such countries is to invite retaliation and a reduction, rather than an increase, in the competitiveness of international markets.

Conclusion

The Commission's present rules protect U.S. carriers and promote international competition. Neither the NPRM, nor the petitions for rulemaking that led to the NPRM, show any specific failure of those rules to serve the public interest. Accordingly, those rules should be retained and the regulations proposed in the NPRM should not be adopted.

Respectfully submitted,

Telex-Chile, S.A.



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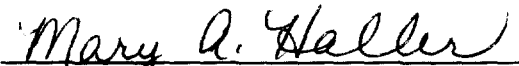
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March 28, 1995

CERTIFICATE OF SERVICE

I, Mary A. Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that an original and four copies of the "Comments of Telex-Chile" were filed at the office of Mr. William F. Caton, Acting Secretary of the Federal Communications Commission, on this 28th day of March, 1995.


Mary A. Haller